

### **REMARKS**

These remarks are directed to the final office action mailed November 7, 2008, setting a three month shortened statutory period for response set to expire on January 7, 2009. The office action issued by the Examiner and the citations referred to in the office action have been carefully considered.

Prompt reconsideration is requested in view of the above claim amendments and the following remarks. As indicated, amendments introduce no new matter. Claim 84 has been added. Claims 69-80 and 82-84 are pending.

### **Claim Objections**

Claims 76 and 78 have been objected to because of informalities. Claims 76 and 78 have been amended to correct the informalities and thus overcome the Examiner's objections.

### **Claim Rejections under 35 USC § 102 and § 103**

Claims 69 and 77 have been rejected under 35 USC § 102 as being anticipated by Beard et al. (U.S. Patent No. 5,112,296). Claims 74-76 have been rejected under 35 USC § 103 as being obvious over Beard et al. in view of Grove et al. (U.S. Patent No. 6,010,468).

Beard et al. teaches a protocol wherein activation occurs when **both** the EMG electrodes and the angular position sensor detect signals. As described in column 3, lines 35-38 of Beard et al., "Activation of the lifting means will not occur until both processed signals exceed their respective threshold levels set in advance by the user or a clinician."

Applicant teaches a system having a computer processor which implements a protocol responsive when self-actuation or attempted self-actuation is detected by the EMG sensor **but is not detected** by the joint position sensor. Therefore, in contrast to Beard et al., Applicant teaches that activation of the protocol will not occur until the EMG signal exceeds its respective threshold level and the joint position signal **falls below** its respective threshold level. Column 6,

lines 34-37 of Beard et al. teaches, “Gear motor 29 will remain activated until either the leg position information signal or the processed EMG signal fall below their respective preset threshold levels.” **Grove et al. requires both signals to be detected for activation, whereas Applicant requires that only the EMG signal and not the joint position signal be detected for activation.**

Applicant respectfully submits that Grove et al. teaches a different system with a different activation protocol. Therefore, none of the references teach or suggest all of the elements and limitations of independent claim 69. Independent claim 69 and the claims thereby dependent thereon are patentable under 35 USC §102 and 103. The Examiner is respectfully requested to reconsider and now withdraw the Examiner’s rejection.

The Examiner indicated on page 3 of the November 7, 2008 office action that claim 82 is allowed. Therefore, Applicant submits that claim 83, which depends on allowed independent claim 82, should also be allowed.


### **Conclusion**

In view of the above, it is respectfully submitted that this application is now in good order for allowance, and such early action is respectfully solicited. Should matters remain, which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone Applicants’ undersigned attorney.

The Director is authorized to charge any additional fee(s) or any underpayment of fee(s), or to credit any overpayments to **Deposit Account Number 50-2638**. Please ensure that Attorney Docket Number 058482-010101 is referred to when charging any payments or credits for this case.

Respectfully submitted,

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